

CAUSE NO. 18-CRS-14-SI

AT 4:17 FILED
O'CLOCK

APR 12 2019

STATE OF TEXAS

V.

SEBASTIAN TORRES

229TH JUDICIAL DISTRICT

**MOTION TO PROHIBIT TRIAL PARTICIPANTS FROM COMMENTING
ON OR RELEASING INFORMATION TO THE MEDIA**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now SEBASTIAN TORRES, the Defendant, by and through his attorney of record, Texas RioGrande Legal Aid, Inc., in the above entitled and numbered cause, and respectfully moves this Court for an order prohibiting all attorneys, parties, witnesses, law enforcement personnel and court personnel who are connected to the prosecution or investigation of this case from making and participating in making any extrajudicial statements that a reasonable person would expect to be disseminated by means of public communication and that relate to:

- A. The character, credibility or reputation of any witness or person reasonably expected to be a witness in these causes;
- B. The investigation which led to the indictments in the above entitled and numbered causes including the investigation by and presentation of the evidence to the grand jury which handed down the indictment in these causes;
- C. The identity or anticipated testimony of prospective witnesses;
- D. Evidence or argument in the cases, whether or not it is anticipated that such evidence or argument will be used at trial;
- E. The identity or nature of physical evidence expected to be presented or the absence of such physical evidence;
- F. The weight of any evidence collected or expected to be presented in these causes;
- G. The strength or weakness of the case of either party;
- H. Any other information which the person making the statement knows or reasonably should know is likely to be inadmissible as evidence and would create a substantial risk of prejudice if disclosed;

In support of this motion, Mr. Torres submits the following:

I.

On January 12, 2018 the State indicted Mr. Torres on two counts. Defendant was released on bond on August 10, 2018.

On February 9, 2018 the Defendant filed a motion to transfer the proceedings due to the widespread publicity that this case have received, much of which has been inaccurate, false, speculative, and inflammatory.

On April 10, 2019, Defendant was taken into custody for the offenses of Count I. “On or about the 30th day of July, 2017, and before the presentment of this indictment, in Starr County, Texas, did then and there intentionally and knowingly cause the death of an individual, namely C.O., by shooting C.O. with a handgun, for remuneration or the promise of remuneration from Jose Luis Garcia, Jr. Namely by accepting \$2,000.00” and of Count II “on or about the 30th day of July, 2017, and before the presentment of this indictment, in Starr County, Texas did then and there, knowing that an offense had been committed, namely, murder, intentionally and knowingly, concealed physical evidence with intent to impair its availability as evidence in any subsequent investigation or official proceeding related to the offense.”

The State has made statements through the media to the public including but not limited to the following:

A.



229th Judicial District Attorney

21 hrs

For Immediate Release:

On March 29, 2019, the 229th D.A. Omar Escobar's office received new evidence from the Texas Department of Public Safety Crime Lab. This new evidence required that a grand jury reconsider the charges brought against Jose Luis Garcia Jr.(DOB 7-26-2000), Phillip Selvera(DOB 12-18-2000) and Sebastian Torres(DOB 7-23-2001). On Wednesday, April 10, 2019, a Starr County grand jury considered this homicide along with the new evidence and returned indictments charging Jose Luis Garcia Jr., Phillip Selvera and Sebastian Torres with Capital Murder. Jose Luis Garcia Jr., Phillip Selvera, and Sebastian Torres have been ordered to be held without bond.

Because the alleged murders happened before they turned 17 (juveniles), Phillip Selvera and Sebastian Torres will be ordered to appear before County Court at Law Judge Orlando Rodriguez for mandatory transfer proceedings to District Court for further proceedings as adults.

"This is why it's important to wait for scientific tests to be completed by DPS Crime Lab. DPS has explained that they have a long wait list for scientific testing. However, we appreciate that the DPS Crime Lab has completed these immediate tests so that we can proceed with appropriate charges," explained 229th District Attorney, Omar Escobar.

No date has been set for transfer proceedings from the Starr County Court at Law.

All persons are presumed to be innocent unless and until proven guilty in a court of law.

B.

All persons are presumed to be innocent unless and until proven guilty in a court of law.

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Luis Barrera Hope at least one of them gets the injection. 10

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Ana L. Alvarez Let's hope/pray all 3 get it. 2

Like · Reply · 17h

Write a reply...

Shantel Guerra La Justicia Divina De Dios Es Muy Justa 7

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Aida Garcia Avila Justice for Chayse 6

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Belen Amando Ramirez JUSTICE FOR CHAYSE! 5

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Leticia LA Justice for CHAYSE' 4

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II.

The Constitution guarantees the right to a fair trial by impartial jurors, and an outcome affected by extrajudicial statements would violate that fundamental right. *See Gentile v. State Bar of Nevada*, 501 US. 1030, 1075 (1991). Intense publicity surrounding a criminal proceeding,

what has been referred to as “trial by newspaper”, poses significant dangers to a fair trial. *See Pennekamp v. Florida*, 328 U.S. 331, (Frankfurter, J., concurring) (“[I]t is indispensable ... that in a particular controversy pending before a court and awaiting judgment, human beings, however strong, should not be torn from their moorings of impartiality by the undertow of extraneous influence.”)

A gag order has been found to be appropriate when (1) there is a substantial likelihood that extrajudicial comments will undermine a fair trial, (2) the gag order is narrowly tailored, and (3) the gag order is the least restrictive means available for preserving a fair trial. *See United States v. Brown*, 218 F.3d 415, 428 (5th Cir. 2000). Importantly, *Brown* applied the substantial likelihood of prejudice test to attorneys and parties in the context of a gag order applied in a criminal matter. Here, as in *Brown*, the State has continuously made statements to the public through media (and social media) coverage, affecting this Court's jury pool, in order to gain favorable attention. *See Brown*, 218 F.3d at 429 (5th Cir. 2000). Extrajudicial comments on, or discussion of, evidence which might never be admitted at trial and ex parte statements by counsel or parties giving their version of the facts threatens to undermine the outcome of a trial and the requirement that it must be decided by impartial jurors. *See Brown*, 218 F.3d 415, 429 (5th Cir. 2000) (quoting *Gentile v. State Bar of Nevada*, 501 U.S. At 1070 (1991)). “The vigilance of trial courts against the prejudicial effects of pretrial publicity also protects the interest of the public and the state in the fair administration of criminal justice.” *Brown*, 218 F.3d 415, 424 (5th Cir. 2000).

The Supreme Court has held “that the atmosphere essential to the preservation of a fair trial—the most fundamental of all freedoms—must be maintained at all costs.” *Estes v. Texas*, 381 U.S. 532, 543 (1965). This trial court has a constitutional duty to minimize the effects of prejudicial pretrial publicity. *See Marceaux*, 731 F.3d at 493 (quoting *Brown*, 218 F.3d at 423); *see also Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966) (“The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences.”); *see also Chandler v. Florida*, 449 U.S. 560, 574 (1981) (“Trial courts must be especially vigilant to guard against any impairment of the defendant's right to a verdict based solely upon the evidence

and the relevant law.”). “The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.” *Patterson v. Colorado*, 205 U.S. 454, 462 (1907) (Holmes, J.); *see also Bridges v. California*, 314 U.S. 252, 271 (1941) (“Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper.”). Modern technology, such as the internet and social media, has given *Bridges* greater importance due to how easy it is for prejudicial outside interferences to have far reaching effects on the fairness of a trial.

Additionally, Article 2.03(b) should be considered in conjunction with the Texas Disciplinary Rules of Professional Conduct. Specifically, rule 3.07(a) of the Texas Disciplinary Rules of Professional Conduct provides:

In the course of representing a client, a lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding. A lawyer shall not counsel or assist another person to make such a statement.

Moreover, rule 3.09(e) of the Texas Disciplinary Rules of Professional Conduct states that the prosecutor has the following special responsibilities:

The prosecutor in a criminal case shall:

exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07.

The courts and the Texas Disciplinary Rules of Professional Conduct, place importance upon a fair trial and cautions that a defendant’s rights should not be impaired by trial publicity. Based on the above information, the State has engaged in conduct that is prejudicial to the

Defendant and infringes on the right for the Defendant to have a fair trial.

III.

A substantial likelihood exists that continued extrajudicial comments of the type previously made by the State and witnesses will taint the jury pool in this case and this Court should enter a narrowly tailored order restricting extrajudicial statements by participants in this case. As noted above, employees of the District Attorney's office have released prejudicial information about the case. Failure to impose restrictions on statements by the participants in this trial will increase the volume of pretrial publicity and set community opinion about Sebastian Torres's guilt.

The public's compelling interest in the integrity of the judicial process as well as the Defendants right to a fair trial are jeopardized by extrajudicial statements made publicly by persons involved in these causes. There exists an ongoing serious and imminent threat to the integrity of the administration of justice as a result of such extrajudicial statements and a reasonable likelihood that such extrajudicial statements will be made throughout the pendency of the causes and will adversely affect the trial of these causes.

The requested order is the least restrictive measure available to ensure a fair trial in this case. Other measures would be inappropriate or insufficient to adequately address the effects of the pretrial publicity.

This Court must act to ensure that Sebastian Torres's rights to due process and a fair trial, guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and Texas Constitution are not compromised by further prejudicial publicity.

IV.

For these reasons, Defendant moves this Court to enter an order prohibiting all attorneys, parties, witnesses, law enforcement personnel, and court personnel who are connected to the prosecution or investigation of this case from releasing information in any form to any agent or employee of any news media concerning any aspect of these proceedings.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully prays that this Court issue an order restraining the attorneys, law enforcement personnel, court personnel, and all prospective witnesses in these causes from making extrajudicial statements as outlined above.

Respectfully Submitted,

By: Heriberto Silva

Heriberto Silva

State Bar #: 18351400

Starr County Regional Public Defender

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310 E. Mirasoles Street,

Rio Grande City, Texas 78582-4406

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above Motion to Prohibit Trial Participants from Commenting on or Releasing Information to the Media was delivered on April 12, 2019 to the following:

229th Judicial District Attorney's Office
401 N. Britton Ave.
Rio Grande City, TX 78582
Tel.: (956) 716-4800
Fax: (956) 487-8692


Heriberto Silva